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SURVEY OF EXISTING AGREEMENTS AND INSTRUMENTS AND ITS FOLLOW-UP

Report of the Secretary-General of the Conference

I. INTRODUCTION

1. The present report has been prepared in response to Preparatory Committee decision 3/25 entitled "Survey of existing arrangements and instruments, and criteria for evaluation" (see A/46/48, vol. II, annex I), in which the Secretary-General of the Conference was requested to compile the necessary background information in accordance with the proposed criteria for evaluating the effectiveness of existing agreements and instruments, on the basis of a revised list of such agreements and instruments, and in cooperation with the international secretariats or depositaries concerned, as applicable.

2. The report is based on the findings of the following 12 consultant studies: 1/

Research Paper No. 24. General environmental concerns

Research Paper No. 25. Nature conservation and terrestrial living resources

Research Paper No. 26. Atmosphere and outer space

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* See A/CONF.151/PC/96.

Research Paper No. 27. Marine environment and marine pollution

Research Paper No. 28. Marine living resources

Research Paper No. 29. Hazardous substances

Research Paper No. 30. Nuclear safety

Research Paper No. 31. Working environment

Research Paper No. 32. Liability for environmental damage

Research Paper No. 33. Environmental disputes

Research Paper No. 34. Sample bilateral agreements

Research Paper No. 35. Relationship with trade and development instruments

These studies were prepared in consultation with the international secretariats and depositaries concerned, whose cooperation is gratefully acknowledged.

3. The survey is arranged in accordance with the proposed criteria for evaluating the effectiveness of existing agreements or instruments (decision 3/25, annex II), followed by a summary of possible follow-up action in the context of Agenda 21, based on the expected outcomes formulated by the Preparatory Committee (decision 3/25, annex I). A draft annotated list of international agreements and instruments is contained in document A/CONF.151/PC/103/Add.1.

II. OBJECTIVES AND ACHIEVEMENT

4. In accordance with the terms of reference of Working Group III (see decision 2/3 (A/46/48), vol. I), the present survey covers existing international agreements and international legal instruments in the environmental field, mainly as recorded in the 1991 UNEP Register of International Treaties and Other Agreements in the Field of the Environment (UNEP/GC.16/INF.4) and listed in document A/CONF.151/PC/77, with the specific amendments made by the Preparatory Committee at its third session (decision 3/25, annex III (A/46/48), vol. II). By definition, therefore, the majority of the agreements and instruments selected are oriented towards environmental conservation and protection against pollution; 15 (mostly on marine living resources) may be described as oriented primarily towards rational utilization and management of resources; and 14 deal with both environment and development aspects. Even development-oriented agreements, however, give recognition to the long-term goal of environmental sustainability of resource use, as illustrated by the 1946 International Convention for the Regulation of Whaling (No. 57) and the 1983 International Tropical Timber Agreement (No. 25).

5. The basic objectives of most agreements and instruments surveyed here (usually stated in preambular or introductory provisions) are formulated in highly general and abstract terms, which makes it difficult to evaluate actual goal achievement. Measurable objectives - such as quantitative targets and technical criteria for compliance - are found in very few agreements, such as international environmental standards for motor vehicles, aircraft and ships (Nos. 28, 30 and 36), the biodegradability limits set by the 1968 European Agreement on the Restriction of the Use of Certain Detergents in Washing and Cleaning Products (No. 73), and the emission reductions laid down in protocols to the 1979 Convention on Long-range Transboundary Air Pollution (No. 31) and to the 1985 Vienna Convention for the Protection of the Ozone Layer (No. 33). In some instances, objectives were subsequently specified and elaborated by joint interpretative or programmatic declarations by the Parties to an agreement, at their regular meetings (as in the case of the 1978 Treaty for Amazonian Cooperation (No. 21) and the 1983 International Undertaking on Plant Genetic Resources (No. 26)) or at separate ministerial-level conferences (as in the case of the marine environment conventions for the North Sea and the Baltic Sea (Nos. 43-45)). Following the 1987 report of the World Commission on Environment and Development, the postulate of "sustainable development", and the consequential integration of environment and development objectives, has figured prominently as a common denominator in authoritative statements issued in the context of many different agreements and instruments.

6. More than half (52 out of 100) of the agreements and instruments covered by the present survey are regional or subregional in scope, including two non-mandatory sets of recommendations (by the Organisation for Economic Cooperation and Development (OECD) (Nos. 3 and 76)). Though geographically restricted, these agreements or instruments can nevertheless have a bearing on global environmental protection and sustainable development: (a) because of the overall ecological significance of the area concerned (such as the 1959 Antarctic Treaty (No. 14) or the 1978 Treaty for Amazonian Cooperation (No. 21)); (b) because of the proportionate contribution of certain regions (such as those covered by the Economic Commission for Europe (ECE) and OECD) to the overall volume of global pollution; (c) because of the acknowledged "demonstration effect" of regional regulatory models for countries outside the region (such as the ECE motor vehicle standards (No. 28) or the European Free Trade Association pharmaceutical standards (No. 74)); or (d) simply because, in the absence of applicable global controls, an aggregate of regional regimes may be the only option currently available to deal with a world-wide environmental problem (such as marine pollution from land-based sources (under Nos. 44-49) or depletion of marine living resources (under Nos. 58-69)).

7. Some agreements or instruments generally address relations with developing countries (e.g., the 1989 Lomé IV Convention (under No. 9)) or seek to balance specific North-South interests regarding natural resource exports/imports (e.g., under Nos. 18 and 25), access to such resources (e.g., under Nos. 26 and 67) or regarding compensation for on-site conservation measures (under the 1972 World Heritage Convention (No. 17)). By contrast, 12 agreements apply between developing countries only, 18 are exclusively between industrialized States, and a further 5 regional agreements

include European developing countries only. To the extent that the remaining other agreements and instruments refer to the special circumstances of developing countries at all, they do so (a) by providing for technical assistance (e.g., the 1972 London Dumping Convention (No. 35) and most of the United Nations Environment Programme (UNEP)-sponsored regional seas conventions (Nos. 46-55)); and (b) by permitting flexible derogations from uniform standards according to the special circumstances and abilities of countries (e.g., under the International Civil Aviation Organization (ICAO) standards for aircraft emissions (No. 30) or under the International Labour Organisation (ILO) conventions on the working environment (Nos. 86-92)). The most detailed recent provisions in this respect are those of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (under No. 33).

8. As pointed out in paragraph 5, the lack of precise objectives is a major difficulty in measuring achievement; membership statistics alone are not sufficient as indicators. Nevertheless, a number of attempts have been made to evaluate the overall effectiveness of international environmental agreements and instruments, either by the Parties, by the secretariats or by independent observers. In the case of the 1972 London Dumping Convention (No. 35), a self-evaluation by the Parties was submitted to the Preparatory Committee in 1990 (A/CONF.151/PC/31); the UNEP secretariat submitted an evaluation of the 1985 Montreal Guidelines on Land-based Sources of Marine Pollution, based on questionnaire replies from the Parties (A/CONF.151/PC/71). Similar earlier evaluations had been undertaken by UNEP for its 1978 Principles on Shared Natural Resources (No. 6) and the 1982 Guidelines on Offshore Mining (No. 37) (see progress reports A/37/396, UNEP/GC.13/9/Add.1, UNEP/GC.14/25 and UNEP/GC.15/9/Add.2). While another UNEP report on the 1982 World Charter for Nature (under No. 1) considered regular monitoring of the implementation of the Charter "an essential requirement for its fulfilment", no further evaluations have been undertaken; the same is true for the 1980 UNEP/World Meteorological Organization (WMO) Provisions for Cooperation between States on Weather Modification (No. 32). In 1986, the secretariat of the Food and Agriculture Organization of the United Nations (FAO) carried out an evaluation of its 1985 International Code of Conduct on the Distribution and Use of Pesticides (No. 77) (see FAO/AGP.GC/89/BP.1); another review is currently in preparation. Other external reviews of the Code's implementation were undertaken by non-governmental and industry organizations in 1987, 1988 and 1989.

9. Comparative analyses of environmental agreements and instruments have also been prepared by the World Bank (for its 1992 annual report), by UNEP (for the institutional chapter of its 1992 "State of the Environment" report), and by the Office for Ocean Affairs and the Law of the Sea of the Secretariat (A/CONF.151/PC/69, submitted to the Preparatory Committee in 1991, covering Nos. 43-55; and the study of an expert group on the conservation and management of the living resources of the high seas, convened in July 1991, covering Nos. 57-69), as well as by individual member States and competent academic research institutions. In particular, in an investigation initiated in 1990, the United States International Trade Commission identified 170 bilateral and multilateral environmental agreements with a view to

periodic evaluation (Report to United States Senate Committee on Finance, USITC: 235/1991); and the United States General Accounting Office in November 1991 completed an evaluation of eight major international environmental agreements (Nos. 18, 25, 31 (c), 33 (a), 35, 36 (a), 57, 79). In June 1991, the Norwegian Fridtjof Nansen Institute issued preliminary findings of its evaluation of the effectiveness of five international environmental agreements (Nos. 14 (b), 31, 43, 45, 57) (Report R:007-1991); and, in December 1991, the Center for International Affairs of Harvard University presented an evaluation of the effectiveness of international environmental institutions, covering several of the agreements and instruments listed here (Nos. 31, 33, 36, 43-45, 57-69, 77-78). The present summary also draws on the results of those studies.

III. PARTICIPATION

10. Less than half of the 100 agreements and instruments surveyed are open to global membership, although several of the regionally restricted agreements allow other States to join upon approval by the original signatories. The geographical scope of some multilateral agreements actually is so narrow as to render them less significant than some bilateral agreements, which in certain regions (especially on the American continent) play a far greater role in practice and therefore should duly be taken into account in global comparison. In view of the total volume of existing transboundary agreements in this field, however (estimated at close to 2,000 for shared water resources and another 2,000 for fishery resources alone, according to FAO Treaty records), the present survey had to be limited to an analysis of representative samples of bilateral agreements on environment and development.

11. A number of legally binding agreements make use of the possibility of reservations or other devices permitting national exceptions in order to facilitate wider participation. Under several nature conservation conventions, for example, reservations may be entered against the listing of particular species of wildlife (Nos. 18, 22, 23). In the field of aircraft engine emissions, the well-established system of notification of national differences under the 1944 Chicago Convention (No. 30) allows for a degree of technical differentiation compatible with basic requirements of uniformity; similarly, the recent Volatile Organic Compounds Protocol to the 1979 Convention on Long-range Transboundary Air Pollution (No. 31 (d)) gives signatories a range of regulatory options and base years from which to select. Several of the ILO conventions on the working environment (Nos. 87, 91) permit temporary derogations under certain circumstances. In some cases, the reservations and exemptions may assist countries, during an initial phase, in adjusting their national regulations to full compliance. Concern has been expressed, however, that excessive use of reservations by Parties could undermine the global effectiveness of an environmental protection regime. Several agreements therefore expressly prohibit reservations, or make them subject to unanimous approval by all Parties (under the 1949 Agreement on the General Fisheries Council for the Mediterranean (No. 60) and the 1960 Convention on Third Party Liability in the Field of

Nuclear Energy (No. 93)), or limit them to specified procedural aspects such as dispute settlement (under the ECE motor vehicle regulations (No. 28) and the International Atomic Energy Agency (IAEA) conventions on nuclear accidents (No. 85)).

12. The membership statistics provided in the addendum to the present report (A/CONF.151/PC/103/Add.1) at first glance seem to reflect an overall balance of industrialized and developing countries. Closer analysis on a country-by-country basis reveals, however, that the total figures per treaty are misleading. The vast majority of ratifications by developing countries concern general declaratory instruments not involving active participation for member States; by contrast, developing countries are underrepresented in agreements dealing with operational aspects of environment and sustainable development, especially considering the full range of existing treaty law in this field. When comparing the membership of individual countries in the 37 legally binding global agreements listed, it appears that those countries which participate in more than 25 agreements are virtually all industrialized States; whereas those countries participating in less than 10 agreements are virtually all developing countries. At the same time, more than half of the regional agreements and instruments concern the European and North American region, mostly without any participation from developing countries. This "clustering" of membership is only partly explained by the fact that some of the older agreements originated in industrialized States and consequently might be expected to have reflected the priorities and interests of those States. Chronological comparison indicates, conversely, that more than two thirds of the agreements now listed date from the post-1972 period, during which global treaty negotiations could at least numerically be expected to have been dominated by developing countries.

13. Further imbalances become apparent from data concerning the actual participation by developing countries in the governance of existing agreements and instruments, including programme activities, working groups and regular review meetings. For example, at the 1991 Geneva meeting of the Conference of the Parties to the Migratory Species Convention (No. 22), which then had a fairly balanced membership of 18 industrialized and 19 developing countries, there was an official participation of delegations from 14 industrialized and only 6 developing countries.

14. In response to these imbalances - which may be assumed to reflect structural problems of financial and staff resources for participation - several international agreements and instruments have developed special incentives to encourage participation and facilitate implementation by developing countries. A number of special funds have been set up for this purpose under different agreements, starting with the World Heritage Fund of the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage (No. 17); though primarily used to finance on-site projects implementing the Convention, the World Heritage Committee recently decided to make an allocation from the Fund in order to assist experts from the least developed countries to participate in the work of the Committee. Under the 1971 Ramsar Convention (No. 16), a Wetland Conservation Fund was launched in

1990 to assist developing countries in implementing the Convention; also, the regular budget includes a budget line to support the participation of developing countries in meetings. Under the 1979 Migratory Species Convention (No. 22), in addition to the existing trust fund for the participation of developing countries in expert meetings, the 1991 Conference agreed to earmark a sum equivalent to 10 per cent of the regular budget for technical assistance. An International Fund for Plant Genetic Resources operates under the 1983 International Undertaking on Plant Genetic Resources (No. 26). Under the 1987 Montreal Protocol (No. 33 (a)), an Interim Multilateral Ozone Fund became operational in 1991, in addition to the trust funds established to finance meeting attendance by developing countries.

15. Other incentives for wider participation by developing countries, as reported by the secretariats of international agreements and instruments, relate primarily to the availability of technical assistance and training directed at national capacity-building, to enable countries to comply with the technical requirements of agreements. While technology transfer is mentioned prominently in some agreements (including Part XIV of the 1982 Convention on the Law of the Sea (No. 38); the ozone layer agreements (under No. 33); and the 1989 Basel Convention on Hazardous Wastes (No. 79)), the main significance of these provisions appears to have been as a framework for multilateral and bilateral programmes of financial assistance. In the context of the 1979 Convention on Long-range Transboundary Air Pollution and its protocols (No. 31), a task force on technology exchange was established in 1988 (recently merged with a new Working Group on Technology) mainly to promote the transfer of environmental technologies to economies in transition.

16. On the whole, the participation of developing countries in existing environmental agreements and instruments may be said to have been influenced by a combination of factors, including the availability of financial resources, technical and scientific assistance, and pressure by parliamentarians, non-governmental organizations, industries, the press and the general public. Flexible treaty provisions, including the availability of temporary derogations and reservations, are also likely to have played a role in some cases.

IV. IMPLEMENTATION

17. The entry into force of legally binding agreements depends on the agreed minimum number or threshold of ratifications. While high thresholds may be justified by a desire to ensure a high degree of instant uniformity and to avoid competitive disadvantages for early participants, the drawback is long delays in implementation, as illustrated by the 1982 Law of the Sea Convention (No. 38) (requiring 60 ratifications and still not in force) and several marine pollution conventions (delayed by the minimum tonnage requirements under agreements Nos. 36 and 97). The reverse tendency of other agreements therefore has been to accelerate entry into force by lowering the threshold, to only three ratifications (as in the 1986 IAEA conventions on nuclear accidents (No. 85)) or to a minimum of two, as in the case of the ILO

conventions on the working environment (Nos. 86-92), the Red Cross protocols (No. 5) or the ECE motor vehicle regulations (No. 28). Alternatively, international technical rules may be brought into effect without requiring ratification (in the form of annexes, as under Nos. 18, 22, 31, 33 etc.) or even by "tacit consent" (e.g., under Nos. 30 and 36). Parties may also agree to waive consent requirements voluntarily (as under the 1967 Tlatelolco Treaty (No. 83)) or to apply agreements on an interim basis (as under the 1991 Espoo Convention (No. 11)).

18. Once an agreement has come into force, compliance by the Parties with their commitments may be controlled by a variety of techniques developed under different international regimes. Apart from joint scientific monitoring of national environmental parameters (e.g., the EMEP monitoring programme under No. 31 (a)) and mutual recognition of inspections (e.g., under Nos. 50 and 74), the method most frequently used is periodic reporting by all Parties, followed by joint public review of the information submitted.

19. There are wide differences in the quality of national performance reports as a means to monitor compliance with international agreements and instruments. Some agreements (such as the 1978 Treaty for Amazonian Cooperation (No. 21)) contain no reporting duties; in others (such as the 1968 African Convention on the Conservation of Nature and Natural Resources (No. 15)) a general duty to report on implementation is stipulated but has never been applied, in the absence of appropriate mechanisms or procedures. In some instances (such as the 1982 World Charter for Nature (No. 1 (a)) and other UNEP-sponsored guidelines), reports on implementation were initially not foreseen but were subsequently solicited from Governments by ad hoc questionnaires from the secretariat, sometimes with disappointing results. In the case of agreements on marine living resources (e.g., Nos. 60 and 66) and the 1983 International Tropical Timber Agreement (No. 25), reporting concerns general fishery data and trade data rather than information on compliance. As a rule, reporting results are noticeably better where they are based on an internationally agreed format and according to agreed reporting schedules with recurrent deadlines.

20. One of the most elaborate reporting schemes is that of ILO. Pursuant to article 22 of the ILO Constitution, States having ratified ILO conventions must report on their laws and practices applying the conventions, currently at four-year intervals. After preliminary review by the secretariat, the reports are examined by an independent Committee of Experts, which may direct questions and observations to the States concerned, and are then submitted to the intergovernmental Committee on Standards of the annual ILO Conference for public discussion. A special feature of the ILO review procedure is the active participation of non-governmental workers' and employers' organizations. Compliance of States with their reporting obligations has generally been good, and over the past five years, of the 178 national reports due for the ILO working environment conventions (Nos. 86-92 in the present survey), 158 were duly submitted; it is noteworthy, however, that 15 of the 20 missing reports concerned developing countries.

21. Other organizations have encountered more serious problems of reporting. Only about 60 per cent of the Parties to the 1972 London Dumping Convention (No. 35) complied with their obligation to report on dumping activities; the percentage of Parties reporting under the 1973-1978 MARPOL Convention for the Prevention of Pollution from Ships (No. 36) is approximately 30 per cent, with major gaps particularly in developing countries (of the 70 national reports received from 1986 to 1990, 58 were from industrialized States). While the 1983 International Tropical Timber Agreement (No. 25) had 46 Parties (21 importing/industrialized countries and 25 producing/developing countries) in 1990, only 15 (12 importing and 3 producing countries) submitted the required data on their harvesting and trading of timber. Under the 1973 Convention on International Trade in Endangered Species (CITES) (No. 18), only 38 per cent of the industrialized States and only 19 per cent of the developing countries Parties submitted their 1989 annual reports on trade movements, and reports were frequently late or incomplete. Of the 31 Parties to the 1979 Convention on Long-range Transboundary Air Pollution (No. 31), 7 (1 developing and 6 industrialized countries) failed to submit their 1990 major review reports. About 80 per cent of the Parties to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (No. 33 (a)) responded to the requirement for reporting baseline consumption data; however, data from many countries were incomplete, which prompted the establishment in 1990 of an ad hoc Group of Experts on the Reporting of Data. The 1991 Meeting of the Parties urged developing countries to inform the secretariat of any difficulties they face in reporting data so that assistance can be provided to remedy the situation.

22. Once national data are received, they need to be processed and analysed, frequently by specialized external experts, for example, by the IUCN/UNEP/WWF Wildlife Conservation Monitoring Centre under the 1973 Endangered Species Convention (No. 18); by the international centres of the EMEP monitoring programme under the 1979 Long-range Transboundary Air Pollution Convention (No. 31), and on behalf of HELCOM under the 1974 Baltic Marine Environment Convention (No. 44); and by the International Council for the Exploration of the Sea (No. 63) under several agreements on marine living resources. The ultimate responsibility for evaluation of national reports remains, of course, with the intergovernmental Conferences of the Parties.

23. Under the 1973 Endangered Species Convention (No. 18), the secretariat takes up cases of non-compliance directly with the Parties concerned (more than 100 cases annually) and transmits the information received in response to the Conference of the Parties for action, which in serious cases may decide to suspend wildlife trade with a Party in non-compliance. Under the European Community (EC) Treaty, as amended by the 1986 Single European Act (No. 9), the EC Commission has in a large number of cases (242 until 1990) lodged proceedings against member States for non-compliance with environmental directives; more than half of these proceedings were based on complaints by individual citizens or groups. While complaint procedures are also foreseen in other agreements (e.g., complaints by Governments to the United Nations Security Council under the 1977 Environmental Modification Convention (No. 4), or under the 1972 Biological Weapons Convention (No. 25)), these have not been

used in practice. Similarly, the mechanisms for intergovernmental complaints and inquiry available under articles 24-26 of the ILO Constitution have so far not been invoked in connection with any of the ILO conventions on the working environment. A new procedure to follow up on non-compliance was introduced in 1990 under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (No. 33 (a)); the procedure is being elaborated further by an ad hoc legal expert group. A new complaints procedure was also introduced in the 1991 Volatile Organic Compounds Protocol to the Long-range Transboundary Air Pollution Convention (No. 31 (d)).

24. Even though many of the global and regional agreements surveyed contain provisions and detailed annexes for dispute resolution - including references to binding arbitration or judicial settlement, though usually on an optional rather than a compulsory basis - so far there are no known cases in which any of these provisions were invoked or used. While the 1974 Nordic Environment Protection Convention (No. 2) and the 1974-1977 OECD Principles concerning Transfrontier Pollution (No. 3) may be said to have promoted equal rights of access and non-discrimination in national judicial and administrative proceedings, they have not directly been applied in disputes.

25. It may be concluded, therefore, that the implementation of agreements or instruments has mainly been influenced by such factors as financial resources, technical and scientific assistance, public information and national reporting duties. By contrast, international supervisory bodies, non-compliance procedures and dispute settlement procedures so far have not played a major role.

V. INFORMATION

26. The addendum to this report provides bibliographic source references to some major international collections in which the full texts of the 100 agreements and related instruments covered by the present survey are reproduced. In addition, several Governments (e.g., Canada and Hungary) have recently published complete national compilations of the environmental agreements and instruments to which they are Parties. The secretariats or depositaries identified in the addendum frequently issue further information and guidance material to assist in the implementation of agreements; examples are the CITES Directory and Identification Manual (under No. 18), the Handbook of the Antarctic Treaty System (under No. 14) and the Handbook for the Montreal Protocol on Substances that Deplete the Ozone Layer (under No. 33 (a)).

27. Information on basic treaty data, entry into force and membership is annually updated in the UNEP "Register of International Treaties and Other Agreements in the Field of the Environment". Several international secretariats issue periodic newsletters for use by Governments, the industries concerned and the general public. A wide range of additional information is available from non-governmental organizations and institutions, such as the Environmental Law Centre of the International Union for Conservation of Nature

and Natural Resources (IUCN), and in the context of specialized international training programmes as organized by the United Nations Institute for Training and Research (UNITAR), the International Maritime Law Institute of the International Maritime Organization (IMO) and the International Development Law Institute (IDLI).

VI. OPERATION, REVIEW AND ADJUSTMENT

28. A directory of the secretariats or depositaries for 100 agreements and instruments is given in the addendum to the present report. There are major differences, depending on whether the attributes of a secretariat include specific monitoring or reporting functions, and/or the coordination or technical-financial administration of international programmes and projects. While most treaty secretariats are part of larger international organizations, making budgetary specification difficult, the following table compares the 1990 annual budgets of eight major international secretariats:

Agreement (No.)	Short title (and location)	Staff (Professional and General Service)	Annual budget (Millions of United States dollars)	Main funding source
18	CITES (Lausanne)	18	2.46	Parties
25	ITTO (Yokohama)	20	2.36	Parties
31	LRTAP (Geneva)	7	1.30	United Nations/ ECE
33	Vienna/Montreal (Nairobi)	6	2.30	Parties and UNEP
35	LDC (London)	5	0.76	IMO
36	MARPOL (London)	20	3.03	IMO
57	IWC (Cambridge)	13	1.31	Parties
79	Basel (Geneva)	4	0.68	Parties and UNEP

Source: United States General Accouting Office, 1991.

29. The budgets given above refer to international administration and meeting costs and do not include the participation costs of the Parties, such as travel to meetings under the agreement. Even with a minimum attendance at only two or three one-week meetings at the secretariat headquarters (actual meeting numbers in 1990 were much higher), travel alone would on average require at least US$ 10,000 per year/per Party. As indicated in paragraph 14 above, some travel funding is normally available to facilitate participation by experts from developing countries, either from one of the trust funds established for this purpose or from secretariat funds.

30. A number of agreements and instruments provide for the establishment of scientific advisory bodies to contribute expertise for policy-making, especially in periodic reviews and assessments. As an alternative to in-house advice, an existing international institution may be designated for this purpose (as in the case of the International Council for the Exploration of the Sea (No. 63)).

31. Non-governmental organizations have traditionally played a major role in the negotiation and implementation of international environmental agreements. Under identical provisions of the 1973 Endangered Species Convention (No. 18) and the 1979 Migratory Species Convention (No. 22), the UNEP secretariat thus regularly draws on the services of "suitable intergovernmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management" of wildlife. While in conventions on the working environment (Nos. 86-92), workers' and employers' organizations are formally recognized as part of the ILO tripartite system of decision-making, most other environmental agreements or instruments contain no express reference to the status of non-governmental organizations.

32. Procedures for periodic review and adjustment have been built into several of the most recent international environmental agreements, so as to provide a "feedback loop" for new scientific information:

(a) Under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (No. 33 (a)), four assessment panels, coordinated by an Open-ended Working Group, reported to the 1990 London meeting of the Parties and provided the basis for a series of far-reaching amendments. The next round of assessments is now under way.

(b) Under the 1988 Nitrogen Oxides Protocol to the Long-range Transboundary Air Pollution Convention (No. 31 (c)), regular reviews are undertaken by a new Working Group on Strategies; the group developed the "critical loads" approach and submitted its first report in 1991.

(c) Under the 1989 Basel Convention on Hazardous Wastes (No. 79), an evaluation of the treaty's effectiveness is to be undertaken three years after its entry into force and at least every six years thereafter.

VII. CODIFICATION PROGRAMMING

33. A number of new draft conventions and protocols are currently in preparation, including the following: an ILO convention on prevention of industrial disasters (1993); an ECE convention on transboundary impacts of industrial accidents (1992); an ECE convention on protection and use of transboundary watercourses (1992); a revision of the 1985 Sulphur Emissions Protocol under the Long-range Transboundary Air Pollution Convention (No. 31) (1992); a revision of the 1958 ECE Motor Vehicle Agreement (No. 28) (1992); a Council of Europe convention on civil liability for damage resulting from activities dangerous to the environment (1992); a liability protocol under the 1989 Basel Convention on Hazardous Wastes (No. 79) (1992); a revision of the 1974 Baltic Marine Environment Convention (No. 44) (1992); a possible merger of the 1972 Oslo and 1974 Paris conventions on marine pollution in the North Sea (Nos. 43 and 45) (1992); new protocols on offshore mining and on hazardous wastes under the 1976 Mediterranean Convention (No. 46) (1992), and on land-based marine pollution both under the 1981 West African Convention and under the 1983 Caribbean Convention (Nos. 48 and 52) (1992-1993).

34. An in-depth review of the law-making work of all international organizations in this field was last undertaken in 1980/81 (Environmental Law: UNEP Report No. 2, 1981; update currently in preparation). Following the discontinuation of the earlier surveys of legislative activities in the United Nations system - which had at least provided mutual information to the various secretariats - there is currently no formal mechanism for coordinating this kind of drafting work; the retrospective summary of past activities in the United Nations Juridical Yearbook continues to suffer from a severe publication lag (the most recent volume published covers the year 1985). Yet the volume of current drafting suggests a need for timely coordination, which should also include liaison with related drafting work outside the United Nations system (as already initiated for airborne marine pollution under Nos. 31 and 44-45, or with regard to protection of the environment in times of armed conflict under Nos. 4-5).

35. Future codification projects in this field will have to take into account, in particular, the ongoing work of the International Law Commission on four topics: State responsibility; international liability for injurious consequences arising out of acts not prohibited by international law; crimes against the peace and security of mankind; and the law of non-navigational uses of international watercourses. Another area requiring close coordination with other United Nations bodies is the relationship between existing agreements or instruments in the environmental field and relevant international trade agreements or instruments, taking into account the 1990 Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of the Developing Countries; the International Development Strategy for the Fourth United Nations Development Decade; and progress in the preparation of a code of conduct for transnational corporations, and the draft guidelines on sustainable development imperatives being prepared by the United Nations Centre on Transnational Corporations. In this context, the recent decision by the

Council of the General Agreement on Tariffs and Trade (GATT) to reactivate its Group on Environmental Measures and International Trade is significant, in view of the Group's agenda to consider:

(a) Trade provisions contained in existing multilateral environmental agreements (in particular Nos. 18, 33 (a) and 79) vis-à-vis GATT principles and provisions;

(b) Multilateral transparency of national environmental regulations likely to have trade effects;

(c) Trade effects of new packaging and labelling requirements aimed at protecting the environment.

36. It should also be kept in mind that the evolution of international law in the field of environment and sustainable development is influenced by mechanisms other than formal legal agreements or instruments:

(a) In addition to the non-mandatory "soft law" instruments already listed (Nos. 1, 3, 6, 10, 26, 32, 37, 39, 71, 76-78, 81), there are a number of programmatic instruments which, because of their adoption at interministerial or other high-level intergovernmental meetings, serve as normative reference for further law-making. Examples are the action plans adopted in the context of the UNEP regional seas programme (reflected in Nos. 46-49, 51-52, 54-55); the role of the International North Sea and Baltic Sea Conferences in shaping the revisions of the OSPARCOM and HELCOM conventions (Nos. 43-45); and the corresponding role of the 1991 Rovaniemi Conference and Declaration in the development of a new Arctic Environment Protection Strategy.

(b) The relative weight of standards and guidelines adopted by competent international technical bodies, even without legally binding effect, in influencing State practice can be virtually equivalent to that of formally binding agreements or instruments in this field. Examples are the food quality standards of the joint FAO/World Health Organization (WHO) Codex Alimentarius Commission, which only become binding upon unilateral governmental acceptance; and the entirely indicative WHO guidelines for drinking-water quality and ambient air quality. Where compliance with such reference norms is made a condition of technical assistance (as in the case of the IAEA basic nuclear safety standards) or of financial assistance (through the World Bank's internal "operational directives" for projects, e.g., on international waterways and on environmental assessment), these instruments acquire special significance for future international law-making.

VIII. POSSIBLE FOLLOW-UP ACTION

37. In the context of Agenda 21 (programme area IV.8), the Preparatory Committee is expected to examine possible areas for the further development of international environmental law, in the light of the need to integrate environment and development, especially taking into account the special needs and concerns of the developing countries (Terms of Reference of Working Group III, decision 2/3 (A/46/48), vol. I, annex I). To facilitate discussion, the present report presents some of the options for action, taking into account the expected outcomes envisaged by the Preparatory Committee (decision 3/25, annex I (A/46/48), vol. II) as well as the conclusions of the 1990 Siena Forum on International Law of the Environment (A/45/666), the Beijing Symposium on Developing Countries and International Environmental Law (12-14 August 1991), the UNEP Meeting of Senior Government Officials Expert in Environmental Law for the Review of the Montevideo Programme (30 October-2 November 1991 (UNEP/Env.Law/2/3)), and relevant recent comments by Governments and international organizations in the context of the United Nations Decade of International Law (as summarized in the 1991 report of the Secretary-General of the United Nations (A/46/372)).

A. Basis for action

38. There are now well over 100 international agreements and instruments dealing with environmental matters, and further legal drafting is under way. Yet Governments find it more and more difficult to keep up with this international regulatory process, and to implement it nationally. While global participation is essential to the success of treaty-making in this field, the special needs and concerns of developing countries are often inadequately covered.

39. Experience with a number of existing agreements and instruments shows that these problems can be overcome by proper design of the drafting and negotiating process as well as improved methods of implementation and follow-up, also drawing on lessons from other areas of international law such as trade agreements, labour relations and human rights.

B. Objectives 2/

40. The overall objective is to promote the integration of environment and development policies through effective international agreements and instruments, especially taking into account the needs and concerns of the developing countries. Specific objectives are:

(a) To set priorities for future law-making at the appropriate level, incorporating environmental and developmental concerns;

(b) To promote and support the effective participation of developing countries in the negotiation and governance of international agreements or instruments, including technical and financial assistance and other available mechanisms for this purpose;

(c) To ensure effective implementation and compliance, regular assessment and timely review and adjustment of agreements or instruments by the Parties concerned;

(d) To improve the effectiveness of institutions, mechanisms and procedures for the administration of agreements and instruments;

(e) To resolve and prevent conflicts, including potential conflicts between environmental and development/trade agreements or instruments, also with a view to ensuring that such agreements and instruments are mutually reinforcing.

C. Activities

1. Periodic review and assessment

41. States should, at periodic intervals, undertake joint reviews and assessments of both the past performance and effectiveness of existing international agreements and instruments and the priorities for future law-making in the field of environment and development. There are several options for carrying out this task:

(a) Following earlier UNEP practice, senior legal experts designated by Governments could meet and report, through the Executive Director, to the Governing Council of UNEP, though preferably at shorter intervals than the 10-year cycle of the 1981 Montevideo Programme for the Development and Periodic Review of Environmental Law, and with a broader environment-development perspective;

(b) The legal experts group could report, and recommend action, directly to the Governing Councils of both UNEP and the United Nations Development Programme (UNDP) (or to a joint session of both Governing Councils, as proposed by some Governments in document A/CONF.151/PC/102, paras. 92-93), in which case the broader mandate of the meeting should also be reflected in the composition of the expert group designated by Governments and in the range of international organizations invited to participate in its work;

(c) The review and assessment task could be assigned to a new intergovernmental body (as proposed by some Governments in document A/CONF.151/PC/102, paras. 85-87, 165), possibly assisted by a subsidiary expert committee for this purpose.

2. Participation support for developing countries

42. Developing countries should be given "headstart" support not only in their national efforts to implement international agreements and instruments (as outlined in programme area I.7.B of Agenda 21) but also to participate effectively in the negotiation of new or revised agreements, and in the actual international governance of such agreements or instruments. Support should include assured financial assistance to cover the necessary travel expenses for this purpose, and access to the necessary reference information and scientific-technical expertise on preferential terms.

3. Implementation and compliance mechanisms

43. The Parties to international agreements that are not currently equipped with adequate procedures and mechanisms to promote and verify compliance should jointly adopt measures to introduce such mechanisms (including, where appropriate, national performance reports, joint expert reviews and assessments, complaint and/or fact-finding procedures etc.). Experience from a number of existing agreements and instruments shows that measures to this effect can often be adopted informally by consensus of the Parties, although in some cases formal amendment of the agreement or instrument may be required.

4. International administrative streamlining

44. The Parties to interrelated international agreements should, where appropriate, consider measures for streamlining, harmonizing or combining administrative or supporting services and institutions. Experience from a number of existing agreements and instruments demonstrates the practical feasibility both of joint secretariat arrangements (e.g., for the Oslo/Paris/Bonn Conventions (Nos. 43, 45, 53) on marine pollution control in the North Sea region) and of common scientific advisory services (e.g., the work of the International Council for the Exploration of the Sea (No. 63) on behalf of several regional agreements on marine living resources).

5. Conflict resolution and prevention

45. States should broaden the range of techniques available for dispute settlement and/or prevention under international agreements or instruments, to facilitate expeditious resolution of conflicts, including fact-finding procedures and non-discriminatory mutual access to national judicial and administrative remedies. Optimal use should be made of relevant experience under international agreements in other areas, for example, in the context of the General Agreement on Tariffs and Trade, the International Labour Organisation and the United Nations Commission on Human Rights.

Notes

1/ For technical reasons, the consultant studies have been issued as separate research papers, in English only.

2/ Based on the expected outcomes formulated by the Preparatory Committee at its third session in decision 3/25, annex I (A/46/48), vol. II, annex I).